

Monye (Migration) [2021] AATA 1966 (15 April 2021)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mr Gift Uzoma Monye
CASE NUMBER:	1824331
DIBP REFERENCE(S):	BCC/2017/998940 BCC2017/998940
MEMBER:	P. Maishman
DATE AND TIME OF ORAL DECISION AND REASONS:	15 April 2021 at 11:50 am (WA time)
DATE OF WRITTEN RECORD:	3 May 2021
PLACE OF DECISION:	Perth
DECISION:	The Tribunal remits the decision under review with the direction that the applicant cl.820.211(2) (a) of Schedule 2 to the Regulations for a Subclass 820 (Partner) visa.

Statement made on 03 May 2021 at 2:28pm

CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – genuine and continuing relationship – cooperative relationship – pooling of financial resources – household arrangements – companionship and emotional support – decision under review remitted

LEGISLATION

*Migration Act 1958, ss 5, 65, 359
Migration Regulations 1994, r 1.15; Schedule 2, cl 820.221*

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration on 10 August 2018 to refuse to grant the visa applicant a Partner (Temporary) (Class UK) Subclass 820 visa under the *Migration Act 1958* (the Act).
2. At the hearing on 15 April 2021 the Tribunal made an oral decision and gave an oral statement of decision and reasons. The following is the written record of those reasons.

STATEMENT OF DECISION AND REASONS

3. Mr Monye applied for the visa on 14 March 2017 on the basis of his relationship with Ms Bah. The delegate refused to grant the visa on the basis that Mr Monye did not satisfy clause 820.211(2)(a) because the delegate was not satisfied that Mr Monye is the spouse or de facto partner of Ms Bah.
4. Mr Monye appeared before the Tribunal by video conference today to give evidence and present arguments. The Tribunal also received oral evidence from the sponsor, Ms Khadija Haja Bah. Mr Monye was represented in relation to the review by Mr Opara.
5. The Tribunal had before it a copy of the partner's file containing his application form and his sponsor form completed by Ms Bah. The Tribunal's file also contained the documents provided by Mr Monye in respect of his application. Mr Monye gave the Tribunal a copy of the delegate's decision record with his application for review.
6. The delegate was not satisfied Mr Monye had provided sufficient evidence about the financial and social aspects of his relationship or the nature of his household and Mr Monye's and Ms Bah's commitment to one another. The delegate was not satisfied that the evidence submitted was enough to demonstrate that he was the spouse of Ms Bah.
7. Mr Monye provided the Tribunal further documentary evidence on 31 October 2019, 29 March 2021 and 9 April 2021. The documents include but are not restrained to bank account statements, residential lease agreements, photographs, travel documents and various invoices and letters for utilities.
8. Mr Monye and Ms Bah gave evidence at the hearing. I questioned them individually about their relationship history, the development of their relationship, their knowledge of each other and their family backgrounds and relationships. I questioned them about their financial, social and household aspects of their relationship and the nature of their commitment to each other. Mr Monye and Ms Bah gave their evidence in an authentic and direct manner. Their answers were unrehearsed and I am satisfied that their responses were authentic and from their knowledge rather than a shared knowledge of answers that the Tribunal wanted to hear.
9. The Tribunal also had the opportunity to observe Mr Monye and Ms Bah interact together with one another. They clearly have a close and cooperative relationship, as expected from people in a genuine relationship. I found Mr Monye and Ms Bah to be credible witnesses and I accept their oral evidence on that basis.
10. The Department's file contained a certificate under section 376 of the Migration Act. The Tribunal provided a copy of the 376 certificate to Mr Monye and Mr Opara. They did not dispute that the certificate was valid. I find that the certificate is valid. The document contained information that may be adverse to Mr Monye's application.

11. I put to Mr Monye the gist of the information contained in the document covered by the section 376 certificate. I put that information to him in accordance with section 359AA of the Migration Act. In essence, the gist of the information was the suggestion that Mr Monye had entered into his marriage relationship essentially for the purposes of obtaining an Australian visa. Mr Monye declined the offer to seek additional time in which to provide a response for comment on that information. Mr Monye gave a direct and unrehearsed answer that the information was untrue. Mr Monye said it was demonstrably untrue because he had known Ms Bah for 12 months by the time he married her and his student visa was continuing beyond the time that they were married.
12. The Tribunal attributes little weight to the document protected by the section 376 certificate. The author of the document is unknown and the allegation contained in the document is unable to be tested. I am satisfied that Mr Monye's response is plausible and given the ongoing nature of his relationship supports that the suggestion in the protected document has no basis.
13. The question or the issue for the Tribunal is whether Mr Monye meets the definition in section 5 of the Act as being the spouse of Ms Bah. The Department's file contained a marriage certificate signed by the Registrar of Births, Deaths and Marriages in New South Wales showing Mr Monye and Ms Bah were married in February 2017. There is nothing before the Tribunal to suggest the marriage is not valid and on the evidence I find that Mr Monye and Ms Bah were married to each other under a marriage that is valid for the purposes of the Act as required by section 5F(2)(a).
14. The other provisions of section 5F(2)(b) to (d) require me to form an opinion of the mutual commitment the couple have had as a married couple to the exclusion of all others, the relationship to be genuine and continuing and that they live together. In deciding those matters the Regulations require I take into account the matters in Regulation 1.15A(3). Those matters, in summary, are the financial aspects of the relationship, the nature of the household, the social aspects of the relationship and the nature of the commitment to each other that the parties have.
15. In addition to the joint bank account statements covering the period from 2017 to date, Mr Monye and Ms Bah gave oral evidence about how they operate their financial arrangements. They both gave consistent evidence individually about the approximate earnings they each had. They both gave consistent evidence that Ms Bah had been in Australia for some time prior to meeting Mr Monye and had established herself financially and had her own accounts set up prior to them getting married. They continued to use their own accounts to receive their salaries.
16. They do not have joint ownership of assets but hope to save and acquire assets in the future. They do not have joint liabilities in joint names, however, I accept Mr Monye's evidence that he is unable to obtain a mobile telephone account in his own name and Ms Bah has taken responsibility for the payment of that account by having that account put into her name. I am also satisfied that Mr Monye and Ms Bah pool their financial resources into the joint account and share their day-to-day household expenses from that joint account.
17. I am satisfied that the financial aspects of Mr Monye's and Ms Bah's relationship indicates that they are in a genuine married relationship.
18. In respect to the nature of Mr Monye's and Ms Bah's household they gave consistent information, consistent evidence that they share a two-bedroom residence. They share one bedroom within that residence and their evidence about the use of the second bedroom was consistent. Mr Monye does most of the housework, such as cooking and cleaning, because he is able to work from home for most of the time. He spends more time at home than Ms

Bah and so does things like the cooking and cleaning when he is there. Ms Bah works long hours and works out of the house due to the nature of her employment.

19. I am satisfied that the nature of Mr Monye's and Ms Bah's household is indicative of a couple in a spouse relationship.
20. I considered the social aspects of Mr Monye's and Ms Bah's relationship. There are a number of statutory declarations contained on the Department's file and the Tribunal accepts those statutory declarations as supporting the opinion of friends and acquaintances about the nature of their relationship. Ms Monye provided a number of photographs to the Tribunal and the Tribunal accepts that they demonstrate Mr Monye and Ms Bah undertaking social activities. I also accept the consistent evidence of both Mr Monye and Ms Bah. Though Ms Bah is heavily involved in her employment and works long hours, they have a small group of friends that rely on each other mostly for their companionship and friendly support.
21. I am satisfied that the social aspects of Mr Monye's and Ms Bah's relationship is indicative of a couple in a spousal relationship.
22. In regard to the nature of the commitment of Mr Monye and Ms Bah to each other, they have been married now for four years and have lived together for that time. They rely on each other for companionship and emotional support. They told the Tribunal separately about personal circumstances upon which they have needed to draw on each other's emotional support. They also see their relationship as long-term.
23. I am satisfied that Mr Monye's and Ms Bah's commitment to each other is indicative of a couple in a spousal relationship.
24. In taking into account the matters in Regulation 1.15A(3) I find that Mr Monye and Ms Bah have a mutual commitment to a shared life to the exclusion of others, they have a genuine and continuing relationship and they live together.
25. On the basis of those findings the Tribunal is satisfied that the requirements of section 5F(2) of the Migration Act are met at the time of this application and also at the time of this decision.

DECISION

26. The Tribunal remits the decision under review with the direction that the applicant meets clause 820.211(2)(a) and the Tribunal remits the application to the Department to consider the remaining criteria for the Subclass 820 visa..

P. Maishman
Member